IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

WATERLOO EDUCATION ASSOCIATION, Petitioner, vs. IOWA PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent, and WATERLOO COMMUNITY SCHOOL DISTRICT, Intervenor.	Case No. CV 5414 RULING ON PETITION FOR JUDICIAL REVIEW

This judicial review proceeding was before the court for oral argument and final submission on March 28, 2005. Attorney Gerald L. Hammond appeared on behalf of the Petitioner, Waterloo Education Association (the "Association"). Attorney Jan V. Berry appeared on behalf of the Respondent, the Iowa Public Employment Relations Board ("the Agency"). Attorney Brian L. Gruhn appeared on behalf of the Intervenor, the Waterloo Community School District (the "District"). With the court's approval, the Iowa Association of School Boards filed a brief as *amicus curiae*. Having considered the written and oral arguments of the parties, the court makes the following ruling.

Standard of Review

The standards governing district court review of agency action are well established. The court acts in an appellate capacity to correct the agency's errors of law. *Holland Bros. Construction v. Iowa State Board of Tax Review,* 611 N.W.2d 495, 499 (Iowa 2000). The grounds upon which the court

may interfere with an agency decision are set forth in Iowa Code §17A.19 (10) (2005) and, as pertinent to this dispute, include situations where the decision of the agency is based on an erroneous interpretation of law. Iowa Code §17A.19 (10)(c). In making this determination, the court is not bound by the agency's interpretation of relevant statutes and gives no deference to the agency's interpretation of the law unless that task has clearly been vested by law in the discretion of the agency. Iowa Code §§17A.10(c) and 17A.11 (b) and (c); See also, *Gaffney v. Iowa Dep't of Employment Services.*, 540 N.W.2d 430, 433 (Iowa 1995); *Madrid Home for the Aging v. Iowa Dep't of Human Services.*, 557 N.W.2d 507, 510-11 (Iowa 1996). Even where some degree of deference is appropriate, the court always reserves unto itself the final interpretation of relevant statutes. *Second Injury Fund v. Braden,* 459 N.W.2d 467, 468 (Iowa 1990).

Statement of the Case

1. **Procedural History.** On February 24, 2003, the Association filed a petition before the Agency seeking resolution of a dispute over whether one of its collective bargaining proposals to the District was a subject of mandatory bargaining under Iowa Code Chapter 20. The Agency made a preliminary ruling on April 16, 2003 that that proposal was a permissive, not mandatory, subject of bargaining. The Agency entered its final ruling on September 27, 2004, confirming its preliminary determination. The Association filed its Petition for judicial review on October 26, 2003. As noted, all parties have submitted briefs and made oral argument were made to the court on March 28, 2005.

2. **Facts.** The facts relevant to this dispute are simple and undisputed. They are set out in the Agency's brief and will not be repeated here.

3. **Issue presented.** The issue presented is whether the District was required by law to negotiate over a collective bargaining proposal made by the Association. The bargaining proposal at issue is set out in the court's analysis below.

Issue and Analysis

The Association's proposal to the District out of which this dispute arises is as follows:

> E. Extended Work Year and Extended Work Load
>
> 2. Extended Work Load
>
> a. Any elementary teacher who teaches more than 300 minutes per day as part of his regular workload shall receive additional compensation. Secondary and middle school teachers who are assigned to teach six (6) classes per day shall receive additional compensation. Additional teaching assignments shall be compensated at the employee's hourly proportional per diem rate.

The collective bargaining rights of public employees are governed by the provisions of Iowa Code Chapter 20. Iowa Code §20.9 lists the subjects about which public employees may bargain, as follows:

> The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon.

This provision creates two types of negotiable subject matter: (1) mandatory subjects of bargaining, and (2) permissive subjects of bargaining. *Waterloo Community School Dist. v. Public Employment Relations Bd.* 650 N.W.2d 627, 630 (Iowa 2002) (citing *Decatur County v. PERB*, 564 N.W.2d 394, 396 (Iowa 1997); *City of Fort Dodge v. PERB.*, 275 N.W.2d 393, 395 (Iowa 1979)) (hereinafter referred to as "*Waterloo I*"). Whether a subject is mandatory or permissive is significant because "[o]nly mandatory items may be taken through statutory impasse procedures to final

arbitration, unless the employer consents." *City of Fort Dodge v. PERB,* 275 N.W.2d 393, 395 (Iowa 1979).

Concerning the analysis of whether a proposal is a mandatory or permissive subject of bargaining, the Iowa Supreme Court has stated:

> In determining whether a proposal is a mandatory subject of bargaining, the court applies a two-step test. First, the proposal must come within the meaning of the subjects listed in section 20.9. Second, the proposal must not be illegal under any other provision of law. The issue in this matter concerns the application of the first step.
>
> Several rules govern the court's determination of whether a proposal is a mandatory subject of bargaining under section 20.9. The court looks only to the subject matter and not to the merits of the proposal. The subjects listed in section 20.9 are to be construed narrowly and restrictively. The question is really whether the proposal, 'on its face, fits within a definitionally fixed section 20.9 mandatory bargaining subject.' The scope of a disputed proposal is to be determined by examining what the proposal would bind the employer to do if adopted by the arbitrator. (internal citations omitted)

Waterloo I, supra at 630.

The proposal at issue in *Waterloo I* was nearly identical with the proposal at issue in this case. The relevant language of that proposal was as follows:

> a. Based on a normal work day, any certificated teacher who teaches more than 300 minutes per day as part of his regular workload shall receive additional compensation. Secondary and intermediate teaching assignments will be five (5) class periods per day. Additional teaching assignments shall be voluntary and compensated at the employer's hourly proportional per diem rate.

Id. at 634.

The court in *Waterloo I* rejected the argument that this proposal was a subject for mandatory bargaining under the topic of "wages". Rather, following the reasoning of its decision in *Iowa City Fire Fighters Association v. PERB,* 554 N.W.2d 707, 711 (Iowa 1996), the court concluded that proposal "directly and adversely" affected the employer's exclusive right to control the work performed and could not, therefore, be a subject of mandatory bargaining. *Id.* The Agency found no principled way to distinguish the proposal at issue here from the one at issue in *Waterloo I* and

therefore held that the proposal at issue was not a subject of mandatory bargaining. However, in its lengthy and thorough final ruling the Agency criticized the *Waterloo I* ruling, as well as some of its own prior rulings. The Agency's disagreement with the court's decision in *Waterloo I* is based on its perception that the court decided whether the proposal was a matter of mandatory bargaining based on the impact the proposal would have on the employer's exclusive right to direct the work of its employees. *See* Iowa Code §20.7. Citing *State v. Public Employment Relations Board,* 508 N.W.2d 668 (Iowa 1993), the Agency stated its opinion that the proper test for making the determination is simply whether the subject of a proposal on its face is within the scope of one of the mandatory subjects of bargaining set forth in the statute. This inquiry, the Agency believes, is ultimately answered by asking what the proposal, if adopted, would require the employer to do. The Agency reasoned that the proposal at issue here, if adopted, would require the District to pay additional compensation to teachers who teach more than 300 minutes, or six classes, per day. This, the Agency concluded, is a topic that is squarely within the scope of the topic of "wages" and therefore a mandatory subject of bargaining.

Even accepting the Agency's premise that there is irreconcilable conflict between the court's analyses in *Waterloo I* and *State v. Public Employment Relations Board,* this court would conclude that the proposal here is not a subject of mandatory bargaining. The Agency says that the subject of the proposal at issue is "employee compensation for assignments made by management during an employee's regular work day." While this is an accurate characterization of the proposal, under the court's reasoning in *State v. Public Employment Relations Board,* that makes the "predominate characteristic" of the proposal the regulation of work assignments, not the regulation of wages, in the court's view.

In any event, the Agency is correct that the court's decision in *Waterloo I* controls resolution of this case. The Association argues that the proposal at issue here has been changed from the one at issue in *Waterloo I* in a way that makes it a mandatory bargaining subject even under the court's reasoning in *Waterloo I*. The court agrees with the Agency's conclusion that the proposal at issue contains the same language upon which the court's decision in *Waterloo I* hinged.

Ruling and Order

For all the reasons stated above, the decision of the Iowa Public Employee Relations Board, Notice of Negotiability, dated of September 24, 2004 is affirmed. The Petition for Judicial Review is dismissed. Costs are assessed against the Petitioner, the Waterloo Education Association.

IT IS SO ORDERED June 7, 2005.

DOUGLAS F. STASKAL,
Judge of the Fifth Judicial District of Iowa

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